

My findings on issues is as under:—

ISSUE NO. 1:

The representative of the respondent argued on this issue that these workmen were on job on 1st October, 1978 as T-Mates on work charge basis during the flood season and after completion of work they were terminated after giving the notice Ex. M-2. In this notice there are 22 persons shown. In the order of termination it is stated that due to partly completion of work and acute shortages of funds all the works have come to stand still, therefore the services of the following T-mates are terminated with effect from 20th October 1980. This order shows that there was no work with the department and there were no funds to run the work of the department. There were no alternative except to remove the service of the workmen. He further argued that the workman has admitted in his cross-examination that the person namely Shri Loki S/o Bhiki, Balbir S/o Ram Chander, working with them were also terminated with them. It shows that not only these workmen were terminated but other workmen were also terminated with them due to shortage of fund. The workmen were engaged on work charge basis and chargeable on the work. When there was no work and shortage of fund, so it was not possible to keep these workmen without any work so they were terminated according to the departmental rules and the termination is in order and justified.

The representative of the workman argued that the workman were terminated without any notice. Though the workman have completed two years of service. The workman also produced Haryana Government, General Administration, General Services Gazette notification dated 1st January, 1980 for the ad hoc employees who have completed minimum of two years of service on 31st December, 1979 should be made regular but that is not the case of the claimant in this reference. The claimants have stated that they were employed on work charge basis as T-Mates, they have not employed on ad hoc basis through any employment exchange. It is given in the notification that the persons employed on ad hoc basis

through employment exchange having qualification for the posts should be made regular. He further argued that the respondent should have paid the compensation for the retrenchment of the employees after a service of two years.

After hearing the arguments of both the sides, I am of view that the claimants were employed by the S.D.O. of different divisions on their own rules on work charges basis as T-Mate which is temporary employment goes with the work. The respondent produced 2 witnesses MW-3 and MW-4 Shri Rahemu Din and Shri Azad Kumar, Junior Engineer, who has stated that they gave notice to the workmen, which the workmen refused to accept. The respondent has rightly removed the services of the workmen according to their rules of the department as temporary work charge persons and the orders of the Xen, PWD, Irrigation Branch is justified and in order. So the workmen are not entitled for any relief. This be read in answer to the reference.

The 3rd February, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement: No. 339, dated 5th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8Lab./1480.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the

Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of Executive Engineer (Mechanical) P.W.D. (B&R), Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 205 of 1980

between

SHRI JAWAHAR SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF EXECUTIVE ENGINEER (MECHANICAL) PWD (B&R) GURGAON.

Shri K. L. Sharma, for the workman.

Shri K. S. Mehra and Shri P. C. Masta, for the respondent.

AWARD

This reference No. 205 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/227-79/16566, dated 8th April, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Jawahar Singh, workman and the respondent management of Executive Engineer, (Mechanical) PWD (B&R) Gurgaon. The terms of the reference was:—

Whether the termination of services of Shri Jawahar Singh was justified and in order? If not to what relief is he entitled?

After receiving this reference notices were issued to the parties. The parties appeared and filed their pleadings. The case of the applicant according to the demand notice and rejoinder is that the workman joined as electrician on 27th October, 1976 at a salary of Rs. 296.80 p.m. He discharged his duties to the satisfaction of his superiors, but the respondent terminated his services on 28th October, 1977 without giving any notice or charge-sheet. The workman is entitled for the reinstatement with continuity of service and with full back wages.

The respondent in his written statement stated that the workman was appointed as Electrician Grade II in the scale of Rs. 60--3--90 on work charge basis on 27th October 1976. It was temporary

post as lay down in para 1.129 to 1.132 first para of 3.20 of manual. The claimant was appointed on certain terms and condition as prescribed in the appointment order and according to the term and condition No. 3 of the appointment letter he could be terminated at any time without assigning any reason after serving him 10 days notice. The claimant was given a notice dated 12th October, 1977 telling him that his services were no longer required. He was served 10 days notice expiring on 22nd October, 1977. The claimant received pay upto 22nd October, 1977 and never complained to the department for his wrongful termination. The claimant has come to this court after a lapse of two years and he is guilty of laches. The department is fully justified and in order as per conditions lay down in the appointment letter to terminate the services of the workman. So the reference may be rejected.

On the pleadings of the parties, only one issue as per reference was made:—

Whether the termination of services of the workman was proper, justified and in order? If not, to what relief is he entitled?

My findings on issue is as under:—

The representative of the respondent argued on this issue that the claimant was appointed,—vide Ex. M-1 dated 16th November, 1976 appointment letter by the Xen, mechanical division, PWD (B&R) on the terms and conditions given in the appointment letter at para No. 3 of the appointment letter. It is clearly given in the order that his services can be terminated at any time without assigning any reason at 10 days notice. In case of serious misconduct and negligence of duty his services can be terminated without any notice. The work of the claimant was not satisfactory as reported by the S. D. O. concerned and on that the workman was given 10 days notice after giving 10 days notice which was according to the work charge establishment under rule 1.129 which is as under:—

“Under rule 1.129 rule (7) Members of the work charges establishment, other than Road Inspectors, who are engaged on the

footing of monthly servants will be subject to discharge at 10 days notice except in the case of serious misconduct or gross inefficiency (when no notice will be given) or on payment of pay for 10 days or for such period upto this extent as may be due to them in lieu of notice. Should they desire to resign they will be required to give 10 days notice or forfeit pay for this period or for such period upto this extent as may be due to them in lieu of notice."

of any employment except to harass the department to get money out of this harassment.

The representative of the workman argued that the claimant was employed on 27th October, 1976 as electrician on permanent job but no appointment letter was given to the workman as alleged by the respondent. There were no terms and conditions given to the workman at that time of his appointment. There is no prove that the appointment letter was given to the workman. The workman completed 240 days in the year and in this way continuous service for such a long time makes the workman as permanent employee under section 25-B of the Industrial Disputes Act, and he is entitled for the compensation at the time of termination. The workman was not given any letter of his short coming in the work. The respondent witness MW-1 could not tell any letter of short coming in the work of the claimant. In the cross examination of the workman he stated that there is no fault of the workman and the department wants to remove the services of the workman to accommodate their own person in his place. The workman did not received any 10 days notice as alleged by the respondent in his written statement and statement of the repondent witness MW-1. The workman was victimized due to his union activities. The workman can not give his demand notice at a early date because for a long time he remained ill after recovery he prayed to the department, which they promise to give and after waiting the promise, the workman came through demand notice. He further argued that the workman was terminated without any reason who was permanent employee without pay any compensation after a long continuous service is illegal and without jurisdiction so he may be reinstated with full back wages and continuous service.

The services of the claimant were terminated,—vide Ex. M-2 on 22nd October, 1977. The notice was given to the workman and after the expiry of this notice his services were terminated. He further argued that Shri Harbans, XEN PWD (B&R) Gurgaon appeared as MW-1 who has stated that the workman was given the notice and after the notice he was rightly terminated according to the departmental rules and according to the terms and conditions of the appointment letter Ex. M-1. The witness has also stated in his cross examination that the work of the claimant was not satisfactory and he was warned by the S.D.O. about his work and so action was taken against the workman. The workman was temporary employee and his services can be terminated under the law given above. So his services were terminated accordingly. The orders of termination are justified and in order. He further argued that the workman was terminated on 22nd October, 1977 and the workman gave the demand notice on 21st September, 1979 after a lapse of more than two years. The workman is employed in the factory M/s East India Cotton Manufacturing Company, NIT, Faridabad from the very beginning and this demand notice was given after a so long time to this fact that he was mis-led by such person who advise him to give demand notice to harass the department. He is a technical person and cannot sit idle for such a long time. He is employed person and getting more than what he was getting in PWD (B&R) and he was not in need

After hearing the arguments of both the parties and carefully going through the file I am of view that the workman was terminated according to rules of the department as stated by the representative of the respondent in his arguments. The workman was appointed through a

appointment letter Ex. M-1 where condition of service were given in Para No. 3 and according to that condition, the respondent gave the 10 days notice as required under the rules of the department and after this notice the termination of service of the claimant was quite proper and justified and there is no wrong in the termination order. The workman has not come in the Court with clean hand. He has come in the court after a long time of two years which very belated time and the delay was not explained in the statement of the workman as WW-1 which was a very important thing in the case. So the workman is not entitled for any relief and the issue is decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated the 3rd February, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad

Endorsement No. 340, dated 5th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8Lab/1485.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. The Gurgaon Central Co-operative Bank Ltd., Gurgaon.

IN THE COURT OF
SHRI HARI SINGH KAUSHIK,
PRESIDING OFFICER,
LABOUR COURT
HARYANA, FARIDABAD.

Reference No. 5 of 1980

between

SHRI KHEM CHAND, WORKMAN
AND THE RESPONDENT MANAGE-
MENT OF M/S. THE GURGAON
CENTRAL COOPERATIVE BANK,
LIMITED, GURGAON.

Present:

Shri S. K. Goswami, for the
workman.

Shri S. L. Gupta, for the respondent
management.

AWARD

This reference No. 5 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GG/67-79/723, dated 7th January, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Khem Chand, workman and the respondent management of M/s. The Gurgaon Central Cooperative Bank Limited, Gurgaon. The terms of the reference was:—

Whether the termination of services of Shri Khem Chand was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the claimant according to the claim statement and demand notice is that the claimant was appointed as secretary in the month of April, 1975. The duties assigned to the claimant were neither administrative nor of managerial nature, but purely of clerical nature. The claimant has to maintain the record of the society. The respondent terminated the services of the claimant without any enquiry and without giving any opportunity to the claimant to defend himself. The orders of the termination is totally based on the confessions made by the claimant. The confessions were made on the directions of

the Administrative Officer as he has promised to save from all trouble. So under the threat and coercion and duress of involvement in criminal case, the claimant gave reply to the chargesheet as entire on the dictation of the Administrative Officer. The respondent should have called the explanation against the proposed action of the termination which was denied and it is against the principles of the natural justice. The claimant was condemned unheard which is against the principles of natural justice. The orders of termination were also wrong by the manager. He is neither appointing authority nor a final authority to take any disciplinary action. The allegation of embezzlement are of vague nature. The respondent had never able to substantiate the amount of shortage decisively, correctly and accurately about the quantum of amount alleged to have been embezzled. The amount was Rs. 32,529/- as per manager report, the figure are Rs. 29,786.24 P. and as per report of the society the amount of embezzlement was Rs. 27,687.94 P. So he has prayed that he be reinstated with full back wages and continuity of service.

The case of the respondent according to written statement is that the claimant does not come under the category of workman under the Industrial Disputes Act, 1947 and the claimant was holding post of a Manager and was designated as manager at the time of termination of service. The claimant was charged for embezzlement which he admitted voluntarily through his explanation and confessing embezzlement. The enquiry was held against the claimant and was found guilty of the charges by the enquiry officer. Even otherwise no enquiry is needed with the charges were confessed by the delinquent employee. The chargesheet was perfectly legal and issued by the competent authority. The decision of termination of services has been taken by the competent authority and there is nothing illegal in the termination letter, so the reference may be rejected.

On the pleadings of the parties, following issues were framed:—

- (1) Whether this court has got jurisdiction to hear and decide this case about the fact that

the workman falls under the category of the workman under the Industrial Disputes Act, 1947?

- (2) Whether this Court has got jurisdiction to hear this case?

Those two issues were ordered to be treated as preliminary issues and decided first.

- (3) Whether the termination of the services of the workman is proper, justified and in order? If so to what effect?

- (4) Relief?

After taking the evidence of the parties on the preliminary issue, the preliminary issues were decided in favour of the workman.—vide my order dated 23rd June, 1981, holding that the claimant comes under the definition of the workman under the Industrial Disputes Act, 1947, which is as under:—

ISSUE NO. 1 & 2

Issue No. 1 and 2 are the same issues with no difference. I do not know why these two issues were framed. Issue No. 1 covers the whole to be decided.

The claim of Shri Khem Chand according to his demand notice, dated 27th October, 1979, is that he was appointed as Secretary in the Bank in April, 1975 under the provisions of common cadre secretaries rules applicable at that time. The management gave show cause notice stating some wrong entries alleged to have been done by him prior to his appointment. He has duly replied the same. But without holding any enquiry, services were terminated on 9th September, 1978 which is illegal, void and in-operative against the rules of natural justice. The claimant filed an appeal to the Registrar Co-operative Society, Haryana, Chandigarh, but no response. He further stated his case in his claim statement that he was appointed as Secretary whose duties were neither administrative nor of managerial nature, but purely of clerical nature, to maintain the record of the society. Later on, the designation of changed without any change in the nature of duties as well as emoluments.

Through out, he had one subordinate, i.e., one peon-cum-chowkidar at his disposal. There is no up gradation of the post from Secretary to Mini Bank Manager.

The respondent-management in their written statement described the claimant as manager and does not come under the definition of workman. It was their preliminary objection in the written statement. To prove these issues the management has produced only one document, Exhibit M-1 the rules of the credit society, Ltd., and one witness Shri P. S. Jaglan, Manager of the Central Co-operative Bank as WW-1 who has admitted in his statement that the manager has to maintain the accounts books of the Mini Bank, which is the contention of the claimant. Section 2(s) is as under:—

“Workman” means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act, in relation to any industrial disputes, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:—

- (i) Who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (discipline) Act, 1934 or
- (ii) Who is employed in the police service or an as officer or other employee of a prison or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who being employed in a supervisory capacity, draw wages exceeding five hundred rupees per

ensem or exercise, either by the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

According to the definition the claimant full-fil all the conditions. The claimant was appointed as Secretary,—vide, Exhibit W-1, dated 26th April, 1975 which is very clear. He was appointed at the scale of Rs. 110—4—130/5—200 plus dearness allowance, which is scale for the clerks for the Government at that time. The management has not denied any where that the post of secretary has been up graded by appointing the claimant as Manager, Mini Bank. He is doing the same job which he used to do as Secretary and the grade is same. Designation does not change the nature of work. The claimant main work was to maintain the record of the society as admitted by the manager of the Central Co-operative Bank, Gurgaon, as MW-1. He has no power to appoint, dismiss, suspend, promote or any such controlling power as admitted by the respondent. When he has no such powers then he comes under the definition of the workman and this Court has jurisdiction to hear this reference sent by the Government. So Issues No. 1 and 2 are decided in favour of the workman and against the management.

ISSUE NO. 3:

Issue No. 3 is as per reference? The representative of the respondent argued on this issue that the claimant was a manager, Mini Bank holding the whole money of the Mini Bank according to the rules framed under the Act which is Exhibit M-1. The claimant has to work according to para 25 of the rules given in the Exhibit M-1. While handling the amount of the Mini Bank, the claimant embezzled the amount which is Exhibit M-2 which was a charge-sheet given to the claimant for taking action against the claimant. The claimant replied the same,—vide Exhibit M-2 and admitted Rs. 9,058.06 Paise in his reply and promised to deposit the same up to 30th June, 1976 and requested to the respondent to give time up to 30th June, 1976

for depositing the whole amount. The claimant again sent a letter to the manager, Central Co-operative Bank, Gurgaon, dated 20th September, 1976 when he failed to deposit the whole amount in the Bank. In this letter he has stated that he has deposited Rs. 2,500 on 29th June, 1976 and admitted that Rs. 6,558.06 Paise are due to him, and requested to adjust the salary of the claimant from November, 1975 to August, 1976 in this account. He further argued that the enquiry officer was appointed and he enquired the matter and gave his enquiry report as mark 'B' which was put up before the Administrative Officer of the Gurgaon Central Co-operative Bank Ltd., on 27th September, 1976 in the agenda and in the meeting and after going through the report of the enquiry officer, D.O. Palwal, of 29th September, 1976, D.O. Gurgaon, 22nd September, 1976 regarding the allegation of embezzlement against Shri Khem Chand, Secretary, along with the case file and office comments they resolved that Shri Khem Chand has mis-appropriated huge amount of society and has confessed the guilt, so resolved to terminate the services from the Bank. They further resolved that it is without prejudice to any decision into the cases of embezzlement going in the police level or any amount embezzled. After this resolution, dated 27th September, 1976, the Manager, Gurgaon Central Co-operative Bank, made the order of termination which is Exhibit M-5, dated 1st October, 1976 in which the manager made clear the position of the bank and the claimant. So the orders of termination are made after a thorough enquiry and after giving the full opportunity to the claimant to defend himself for the same, but when the claimant confessed the embezzled money before the enquiry officer and in his explanation and reply of the charge-sheet then there was no need of any further enquiry. The Board of the Directors considered the report of the enquiry of the enquiry officer as appointed by the Bank and after considering the all records and confession of the claimant orders for termination and the orders were justified and in order.

The representative of the workman argued that the workman was given no

opportunity to defend himself in the enquiry he was not informed about any enquiry against him. In fact he was not aware of enquiry held against him. He argued that Shri Nobat Ram, Clerk of the respondent Bank came as MW-1 and stated that he does not know about police case against the claimant. He has stated in his statement that he does not know whether list of witnesses was given to the claimant before the start of the enquiry, whether the claimant participated in the enquiry or not. He further argued that the other witness of the management, M.W.2, Manager of the respondent Bank did not know about the enquiry against the claimant. He only deposed on the basis of the record. The workman has stated in his statement that he received the charge-sheet which was not correct and he replied the same. He was never called for the enquiry. He denied that he has admitted allegations to be correct before the enquiry officer and that in fact he never appeared before the enquiry officer. He further argued that no proceeding of the enquiry stated to have been produced in this court and statement of workman that no enquiry was held should be believed. It has been repeatedly held by various Courts that an enquiry can be held to be proper and valid only if the following steps have been taken by the employer :—

- (a) Communication of the material allegations against the person.
- (b) Adequate opportunity of defence and explanation.
- (c) Reception of all evidence in the presence of the parties; and
- (d) The existence of an impartial enquiry officer.

and in this case all the above things are missing and the enquiry was not held according to the principles of natural justice and such enquiry should be held to be vitiated. The workman was not given adequate opportunity of defence and explanation and no evidence was received in the presence of the workman. The absence of any enquiry proceedings is a prove of the fact that no enquiry was held by the employer. The findings of the enquiry officer mark 'B' amply

shows that no proper proceedings were undertaken by the enquiry officer before making this report.

After hearing the arguments of both the parties, and carefully going through the file, I am of the view that the claimant has admitted the guilt of mis-appropriation and embezzlement in his explanation on charge-sheet, Exhibit M-2/1 clearly shows that the claimant has confessed the whole guilt. After confession of the guilt not once but twice, can not be said that confessions was under duress or coercion. When a person admits the guilt himself without any proof then there is no need of any formalities to be taken in the enquiry. The respondent had given very much time for depositing the embezzled money in the Bank and inspite of time given, the workman failed to deposit the whole amount in the Bank. If such persons are pardoned for a simple reason of not holding the legal procedure in the enquiry proceedings, is not a natural justice. The natural justice demand that every one should come before this court with clean hands. There is no proof given by the claimant about the charge-sheet of embezzlement. He should have proved before me that charges of embezzlement and mis-appropriation are false and the termination on the basis of this charges is also against law, which he has failed to prove before me. So the order of termination of the workman is justified and in order. The Assistant Registrar, Co-operative Society, Gurgaon, issued so many notices to the claimant to deposit the embezzled amount in the Bank. The notices are on the file which cannot be dis-believed. So the workman is not entitled to any relief. This be read in answer to this refernece.

No order as to costs.

The 2nd February, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 345, dated 5th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required

under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No 9(1)82-8Lab.'1486.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Dujodwala Industries, 14/1, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 4 of 1981.

between

SHRI KAMESHWAR THAKUR, WORKMAN
AND THE RESPONDENT MANAGEMENT OF
M S DUJODWALA INDUSTRIES, 14/1,
MATHURA ROAD, FARIDABAD.

Present :

Yoginder Singh, for the workman.

Shri A. S. Chadda, for the respondent management.

AWARD

This reference No. 4 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/80-80/65006, dated 24th December, 1980 under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Kameshwar Thakur, workman and the respondent management of M's Dujodwala Industries, 14/1, Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of the services of Shri Kameshwar Thakur was justified and in order? If not, to that relief is he entitled?

Notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the claimant was appointed on 12th July, 1978 as helper at the rate of Rs. 240 per month. The claimant was charge-sheeted and suspended on 25th June, 1979. Enquiry was conducted and the claimant was not found guilty and taken back on duty on 13th November, 1979. The claimant was a active member of the union and raised a demand of

bonus for 20 per cent which was dissented by the respondent and the workman was dismissed on 13th March, 1980 on the very reason. The claimant prayed for his reinstatement with continuity of services and full back wages.

The case of the respondent according to the written statement is that the claimant was appointed on 13th December, 1979 for a period of three months and after the completion of three months his services were terminated on 13th March, 1980 and the workman was asked to take his full and final from the respondent management. It was not a termination. Previously the claimant was appointed on 1st March, 1979 at a monthly salary of Rs. 165. The workman committed serious acts of misconduct for which he was charge-sheeted and enquiry was conducted against the workman and his services were terminated on 26th October, 1979. On the intervention and request of the co-workers, the management gave another chance to the claimant and the claimant was appointed on his application, dated 13th December, 1979 as un-skilled temporary workman for a period of three months. It was specifically contained in the order of appointment that his services will only for the period of three months. The services of the claimant were terminated on 10th March, 1980 on the expiry of the temporary period of appointment and he was directed to take his full and final dues from the accounts department. So the claimant's allegation of continuance is false and the workman was appointed afresh for three months on a temporary basis and removed after the expiry of that period. It is not a termination and the respondent requested to reject the demand notice.

On the pleadings of the parties, the following issues are framed:—

- (1) Whether the termination of services of the workman is not proper, justified and in order? If not, to what relief is he entitled?

- (2) Relief?

My findings on issue is as under:—

ISSUE NO. 1:

The representative of the respondent argued on this issues that the contention of the claimant is wrong and false that he was appointed on 12th July, 1978 as helper at a salary of Rs. 240 per month, because the claimant has produced no documents to prove that he was

employed in the respondent factory from 12th July, 1978. The workman was appointed by the respondent on 1st March, 1979 at a salary of Rs. 165 on a temporary basis. The workman during his service committed serious act of misconduct for which he was charge-sheeted. The appointment letter Ex. M-1 clearly shows that he was appointed on 1st March, 1979. The appointment letter bears the signature of the claimant. Due to misconduct of the workman he was suspended and charge-sheeted on 27th June, 1979,—vide Ex. M-2 along with other five workers. Domestic enquiry was constituted against the workman along with other workmen and the enquiry officer hold guilty according to the enquiry report Ex. M-2, dated 4th October, 1979. After that enquiry the workman was dismissed from the service,—vide Ex. M-4, dated 26th October, 1979. The Hindi copy of the same order is Ex. M-5. The workman refused to take this order which is shown as Ex. M-6. The enquiry proceedings against the workman with other workmen is Ex. M-22, which shows the serious misconduct by the workmen, but on the request of the co-workers, the workman was again re-employed on a fresh application signed by the workman which is Ex. M-7, dated 13th December, 1979. He was appointed for three months at a salary of Rs. 240 per month on a temporary basis, to give another chance to the workman to amend himself from the wrong activities, but the claimant shows no improvement in the work. So he was again removed from service. On 13th March, 1980,—vide letter Ex. M-8, dated 10th March, 1980. He further argued that the claimant cannot be believed because he has stated in his claim statement that he was found no guilty and was taken back on duty on 13th October, 1979. But in his statement as WW-1, he has admitted the fact of suspension, enquiry and that he was re-employed on 9th December, 1979, which is contradictory to his claim statement. He has stated that he was not taken on duty on 13th November, 1979 and in his own statement he has stated that he has taken back on duty on 9th December, 1979, which shows that whole statement of the claimant based on false and such persons cannot be believed. The claimant has produced no document to prove his case except one oral witness WW-2 Shri Dev Dhari, who has stated in his statement that he knows nothing about the enquiry against this workman. Further stated that there was a oral settlement between

the union and the respondent that the workman should be taken back on 9th December, 1979. He has stated in his cross-examination after seeing the enquiry proceeding where he has signed in the enquiry proceedings that he participated in the enquiry. At one place the witness denies the enquiry and the other place he admits the signature on the enquiry proceedings. Such witness cannot be believed in the interest of justice. He further argued that the respondent sent the money orders of the claimant's dues,—vide Ex. M-9, M-10 and M-11. He further argued that the Government reject the claimant's demand notice and the letter Ex. M-23 is a proof that the Government rejected the demand notice of the claimant, dated 30th May, 1980. But after this rejection the workman again tried for reference and the Government referred the case after tried his hard to bring the reference in the Court. The rejection shows that the Government admitted that the proper enquiry was conducted against the workman in which he was found guilty and rightly terminated from the service.

The representative of the workman argued that the workman was appointed on 12th July, 1978 as helper, but at that time no appointment letter was given to the workmen so the workman cannot give the proof of his appointment from 12th July, 1978. The claimant was active member of the union and he was the office bearer of the committee of the union. He used to raise the demands of the workmen in the interest of the workmen. Previously the respondent did not issue the appointment letter to the workman and on the demand of the union the respondent started to give the appointment letter to the workmen. There were no E.S.I cards and no scheme of E.S.I. was implemented in the factory. This only due to the union worker that it was started in the factory. On these demands the respondent suspended the claimant on a false charge-sheet and the enquiry was not proper and fair. The claimant was terminated and on his termination there was a tool-down strike in the factory and on that tool-down strike the respondent agreed to re-employ the claimant and got signed the blank form from the workman which was filled up after the termination of the claimant. He was working continuously in the factory from the year 1978 and he cannot be terminated in this way. The claimant has compulsory retrenched from the factory without paying any compensation for any other dues which is

against the law. The claimant was a permanent employee of the factory as stated by the workman in his statement as WW-1 and supported by his co-workman as WW-2 in his statement. So the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments from both the sides and carefully going through the file, I am of the view that the arguments put forward by the respondent have some force against the workman's representative. The respondent has fully proved its case for removing the claimant from the factory. There is an enquiry proceedings on the file which shows the misconduct of the claimant with the other workers and the enquiry officer has held guilty of these workmen and after this enquiry the claimant was terminated by the respondent after going through the enquiry proceedings of the enquiry officer. The respondent gave another chance to the workman to amend himself but he failed to show good results and the workman was terminated according to the terms and conditions of the appointment letter of the file. The statement of the workman cannot be believed because there are contradictions in his statement and claim statement for the date of appointment. So in these circumstances, this issue is decided in favour of the respondent against the workman and the workman deserved no relief.

This be read in answer to this reference.

Dated 2nd February, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad

Endorsement No. 346, dated 5th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad

No. 9(1-82-8Lab.1487.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. S. J.

Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 50 of 1981

between

SHRI HARINDER PARSAD, WORKMAN AND THE MANAGEMENT OF M S S. J. KNITTING AND FINISHING MILLS, 13/7, MATHURA ROAD, FARIDABAD.

Shri G. S. Chaudhry, for the workman.

Shri B. R. Grover, for the respondent management.

AWARD

This reference No. 50 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/217-80/6484, dated 3rd February, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Harinder Parsad, workman and the respondent management of M's S. J. Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of service of Shri Harinder Parsad was justified and in order? If not, to what relief is he entitled?

After receiving this reference notices were sent to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the reference is bad in law as the services of the workman has not been terminated by the management? If so, to what effect?
- (2) As per reference.

To prove these issues the respondent produced Shri Ram Nath Sharma as MW-1 and closed their case. The workman produced his own statement as WW-1 and closed his case.

The case of the claimant is that he joined the service of the respondent management on 20th September, 1976 as painter at the salary of Rs. 310 per month. The claimant workman had been working with the respondent management till 10th August, 1980 after that he was not allowed to enter in the factory and in this way the respondent terminated the services of the workman without any reasons or notice or enquiry.

The respondent stated in his written statement that the above workman was charge-sheeted for certain acts of serious and grave

misconduct for which domestic enquiry is pending and instead of taking part in enquiry. The workman stated being absent without leave. They further stated that the name of the workman was not struck off from the roll of the company as alleged in the demand notice. The name of the workman is still on the roll of the respondent management. So there is no existence of Industrial Disputes and the reference is bad as premature. The claimant had denied all the facts of the written statement and stated in his rejoinder that no enquiry is pending against the workman before any officer. The claimant presented himself at the factory gate daily but without any response from the respondent. Then the claimant gave a demand notice to the management under registered post in which the management neither replied it nor attended the conciliation proceedings and then the failure report was sent to the Government. So the reference is not bad in law.

My findings on issue No. 1 is as under:—
ISSUE NO. 1

The representative of the management argued before me that it is not a case of termination. The respondent management has not terminated the services of the claimant according to the record of the company. The workman is absent from duty and he is still on roll according to the record.

The representative of the workman argued that the workman joined the service of the respondent on 20th September, 1976 as painter at a salary of Rs. 310 per month. The claimant had been working with the respondent till 10th August, 1980, thereafter the respondent refused to avail of his services on one pretext or another final one. In this way, the respondent terminated his services without any notice or reason or enquiry. Then the claimant gave a demand notice to the respondent management under registered post which is Ex. W-1. He further argued that the respondent should have struck off the name of the claimant after ten days absence without any reason according to the standing order applicable on the company but the respondent management had not struck off the name of the claimant from the roll of the company to harass the claimant for obstructing him for any action against the respondent. The respondent management refused to give the duty when the workman approached to them for duty and marked absent in their register without any reason. He further argued that the respondent has not issued any letter to the

claimant for his absence or for calling his explanation for absence. He further argued that the respondent had not constituted any domestic enquiry against the claimant. He further argued that marking absence in the register is against the standing order under para No. 16.4. which is as under:—

"If the workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless (a) he returns within ten days of the commencement of the absence or the expiry of the leave and (b) explain to the satisfaction to the Manager the reason of his absence or his inability to return on the expiry of the leave, as the case may be. In case he loses his lien on his appointment he shall be entitled be kept on the Badli list where there is Badli system."

According to the arguments of the workman it is a new method of the management to remove and to put the workman on road. On one hand there is no enquiry against the claimant and no such charges against him and on the other hand the respondent refused to take him on duty without any reason. It is simple termination in view of the respondent. In this method what the workman can except to go in reference. So the reference is not bad in the eye of the law and this Court has jurisdiction to decide this matter. The representative of the management cited 1970, Labour Industrial Cases, Page 421 and 1968—Labour Industrial cases, pages 526 and 851 in this case but after going through the references, I am of the opinion that the above citations are not applicable in the present case. The representative of the workman further argued that the respondent should have struck off the name of the workman under the rule and standing orders after expiry of the said period but they have not done so due to some ulterior motive in the mind of the respondent and without ulterior motive to raise this plea in the reference which cannot be approved in law. He argued that there is no law on the earth which provides the continuity of service even after absent for such a long time without any leave or permission from the respondent management as he joined this factory on 20th September,

1976 working smoothly since then. The respondent has not denied this fact in the written statement and in the statement of the witness. So the reference is not bad in the eye of law.

After leading the evidence by both the parties, the representative of the management has made a statement in the court that the workman has collected his full and final dues and has relinquished his right of reinstatement,—vide Mark 'B'. The representative of the workman did not agree with this statement. On this representative of management was directed to produce the workman for admission of the settlement, which he has failed to do so. In these circumstances, I cannot accept this settlement to be executed, when the representative of the workman oppose the settlement and the representative of the management failed to prove this settlement.

After hearing the parties and considering the whole record carefully, I am of the view that the arguments of the presentative of the workman has some force and I agree with his arguments and hold that reference is not bad in law. So findings on issue No. 1 goes in favour of the workman and against the respondent management.

ISSUE NO. 2:

After deciding the issue No. 1 in favour of the workman, there is nothing left to discuss for issue No. 2, because denial to accept the workman on duty is equivalent to the termination. Although there is no written order for the claimant's termination yet the denial to give the duty to the workman is a termination. So this act of the respondent management is against law and unjustified. So the workman is entitled for his reinstatement with full back wages and continuity of service. No order as to costs. This be read in answer to this reference.

Dated the 2nd February, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 347, dated 5th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.